

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Thomas F. Updegrove, P.O. Box 161, 519 Englesville Rd., Boylertown, PA 19512

Address of Defendant: Honeywell International, f/k/a Allied Signal, Inc., Columbia Road and Park Avenue, Morristown, New Jersey 07962

Place of Accident, Incident or Transaction: Asbestos Exposure in Pennsylvania and elsewhere

(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities?

Yes ☒ No ☐

RELATED CASE IF ANY

Case Number: N/A Judge N/A Date Terminated: N/A

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☐
2. Does this case involve the same prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this Court? Yes ☐ No ☐

CIVIL: (Place ☒ in **ONE CATEGORY ONLY**)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act—Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases (please specify) 28 USC §1452, 1334(b); Bankruptcy Rule 9027(a)(3)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Peter J. Neeson, Esquire, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 8, Section 4(a)(2), that, to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: _____ Peter J. Neeson, Esquire 27601
Attorney-at-Law Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that to my knowledge the within case is not related to any case now pending or within one year previously

terminated action in this court except as noted above.

DATE: _____ 27601

Attorney-at-Law Attorney I.D. #

CIV. 609(9/99)

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

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Place of Accident, Incident or Transaction: Asbestos Exposure in Pennsylvania and elsewhere

(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities? Yes ☒ No ☐

RELATED CASE IF ANY

Case Number: N/A Judge N/A Date Terminated: N/A

Civil cases are deemed related when yes is answered to any of the following questions:

4. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☐
5. Does this case involve the same prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
6. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this Court? Yes ☐ No ☐

CIVIL: (Place ☒ in **ONE CATEGORY ONLY**)

A. Federal Question Cases:

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9. ☐ Securities Act(s) Cases
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1. ☐ Insurance Contract and Other Contracts

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(Check appropriate Category)

I, Peter J. Neeson, Esquire, counsel of record do hereby certify:

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Peter J Neeson Esquire

27601

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DATE: _____ 27601

Attorney-at-Law Attorney I.D. #

CIV. 609(9/99)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

THOMAS F. UPDEGROVE :
:
v. :
: Civil Action
HONEYWELL INTERNATIONAL, INC. :
f/k/a ALLIED SIGNAL, INC., Successor :
in interest to BENDIX CORPORATION, :
et al. :

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Manage Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. § 2441 through § 2255 ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracts (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed

explanation of special management cases) (**X**)

(f) Standard Management -- Cases that do not fall into any one of the other tracks. ()

(Date)

Attorney-at-law

Attorneys for Defendant Honeywell International, Inc., f/k/a
Allied Signal as successor in interest to
Bendix Corporation

RAWLE & HENDERSON _{LLP}

**BY: PETER J. NEESON, ESQUIRE ATTORNEYS FOR DEFENDANT,
STEWART R. SINGER, ESQUIRE HONEYWELL INTERNATIONAL,
JOHN C. McMEEKIN II, ESQUIRE INC., F/K/A ALLIED SIGNAL, INC.,
ATTORNEY I.D. NO. 27601/62006/81250 SUCCESSOR-IN-INTEREST TO
THE WIDENER BUILDING BENDIX CORPORATION
ONE SOUTH PENN SQUARE
PHILADELPHIA, PA 19107
(215) 575-4200
R&H No.: 516171 (Angelos)**

UNITED STATES DISTRICT COURT
[EASTERN DISTRICT]

THOMAS F. UPDEGROVE :

v. :

HONEYWELL INTERNATIONAL, INC. : Civil Action No.: 02-2634
f/k/a ALLIED SIGNAL, INC., Successor :
in interest to BENDIX CORPORATION :

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C § 1452
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9027**

TO: ALL PARTIES ON ANNEXED SERVICE LIST

Honeywell International, Inc., f/k/a Allied Signal, Inc., ("Honeywell"), as successor in interest to the Bendix Corporation ("Bendix"), by and through its undersigned counsel, Rawle & Henderson _{LLP}, hereby gives notice of the removal to the United States District Court for the Eastern District of Pennsylvania of the claims that have been asserted against Honeywell in the action captioned Thomas F. Updegrove v. ACandS, Inc., et al., now pending in the Common Pleas Court of the State of Pennsylvania, County of Northampton, with April Court Term and Number C0048AB2002000230. This Notice of Removal is filed pursuant to 28 U.S.C. § 1452(a) and Rule 9027(a)(3) of the Federal Rules of Bankruptcy Procedure, and as grounds for such removal Honeywell respectfully states as follows:

1. On October 1, 2001 (the "Petition Date"), Federal-Mogul Global, Inc. (collectively "Federal-Mogul") filed a voluntary petition for relief under chapter 11 of Title 11 of

the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware, commencing bankruptcy case number 01-10578.

2. The above referenced state action, which is “related to” the removed claims, was commenced on April 14, 2002, by the filing of a Summons & Complaint in the Court of Common Pleas of Northampton County.

3. The removed claims are for personal injury or wrongful death asserted against Honeywell. Honeywell, formerly known as Allied Signal Inc., is the successor in interest to Allied Corporation which, in turn, was the successor in interest to The Bendix Corporation. The Automotive Sector of Allied Signal Inc. was the business unit within Allied Signal Inc. which continued the “Bendix” line of automotive friction products.

4. Federal-Mogul, or companies acquired by Federal Mogul Global, Inc., are named as co-defendants of Honeywell in this action.

5. The plaintiff(s) in the above referenced action have asserted that joint and several liability arises as to each named co-defendant in this action.

6. As a result, in the above referenced action Honeywell has either affirmatively asserted a cross-claim for indemnification and/or contribution against Federal-Mogul, or such a cross-claim against Federal-Mogul arises automatically by operation of law.

7. Conversely, Federal-Mogul has also either affirmatively asserted a cross-claim for indemnification and/or contribution against Honeywell, or such a cross-claim against Honeywell arises automatically by operation of law.

8. The above referenced claims for personal injury asserted against Honeywell, as well as the cross-claims asserted by Honeywell and the corresponding cross-claims asserted by Federal- Mogul, may be removed to this Court pursuant to 28 U.S.C. § 1452(a). Removal of these claims is proper because the removed claims are: asserted in a civil action; not exempt from removal; and this Court has subject matter jurisdiction over the removed claims pursuant to

28 U.S.C. §1334 due to the fact that these cross-claims asserted by and against Honeywell are “related to” Federal-Mogul’s bankruptcy proceeding. See In re Dow Corning Corp., 86 F.3d 482, 494 (6th Cir. 1996) (holding that Section 1334(b) “related to” subject matter jurisdiction exists over actions for indemnification and contribution claims asserted by non-debtor co-defendants against the debtor).

9. Removal to this Court is timely pursuant to Rule 9027 (a)(3) of the Federal Rules of Bankruptcy Procedure in that the claims in the civil action are “related to” the October 1, 2001, Federal-Mogul bankruptcy case, and this Notice has been filed within thirty days after: (1) receipt of the initial pleading setting forth the claim or cause of action sought to be removed, or (2) receipt of the summons, if the initial pleading has been filed with the court but not served with the summons.

10. Consent of the other named co-defendants is not necessary for removal pursuant to 28 U.S.C. § 1452. See Creasy v. Coleman Furniture Corp., 763 F.2d 656, 660 (4th Cir. 1985). Further, a cost bond is not required to accomplish this removal.

11. Upon removal, the proceedings with respect to the removed claims are non-core. Honeywell does not consent to entry of a final order or judgment by the bankruptcy judge to the extent the bankruptcy court is authorized to hear or determine such claims consistent with 28 U.S.C. § 157(b)(5).

12. On December 17, 2001, Honeywell filed a Motion to Transfer, pursuant to 28 U.S.C. § 157 (b)(5) (the “Transfer Motion”), with the United States District Court for the District of Delaware asking that Court to issue a provisional order to transfer the above referenced removed claims for a consolidated resolution of the threshold scientific question, by means of a Daubert hearing, whether the plaintiffs in the underlying actions can establish that automotive friction products containing encapsulated asbestos fibers can be the proximate cause of certain asbestos- related medical disorders. See 28 U.S.C. § 157(b)(5) (1994); Daubert v. Merrill Dow

Pharmaceuticals, Inc., 509 U.S. 579 (1993); In re Dow Corning Corp., 86 F.3d at 496-97 (holding that 28 U.S.C. § 157(b)(5) vests the power to fix venue over personal injury or wrongful death actions pending against non-debtor co-defendants which are “related to” a debtor’s bankruptcy proceeding, pursuant to 28 U.S.C. § 1334(b), with the district court where the bankruptcy case resides). See Exhibit “A.”

13. On December 19, 2001 the Honorable Alfred M. Wolin of the United States District Court for the District of Delaware issued an Order in favor of Honeywell that: (1) partially withdrew the reference; and (2) provisionally transferred the Friction Product claims to the United States District Court for the District of Delaware, (the “Provisional Order”), subject to further Orders of that Court. See Exhibit “B.”

14. On January 4, 2002 the Honorable Alfred M. Wolin of the United States Bankruptcy Court for the District of Delaware issued an Order (the “Clarification Order”), that clarified the Provisional Order by extending the provisional transfer of Friction Product claims to include claims that would have been subject to the Provisional Order, but had not yet been removed on the date of the Provisional Order. See Exhibit “C.”

15. On February 8, 2002 the Honorable Alfred M. Wolin of the United States Bankruptcy Court for the District of Delaware issued an Order (the “Remand Order”), granting plaintiffs’ Motion for Remand. See Exhibit “D.”

16. On February 11, 2002 the Honorable Anthony J. Scirica of the United States Court of Appeals for the Third Circuit issued an Order temporarily granting an Emergency Motion for Stay (the “Stay Order”), pending appeal of the Remand Order by appellants. See Exhibit “E.”

17. On March 19, 2002, the Honorable Anthony J. Scirica of the United States District Court of Appeals for the Third Circuit issued an Order (the “Stay Clarification Order”), that clarified that the Stay Order issued on February 11, 2002 applies to all appellants and to all

removed claims before the Delaware District Court. See Exhibit “F.”

18. On March 25, 2002, Chief Judge Becker of the Third Circuit Court of Appeals issued an order establishing a briefing schedule and set June 17, 2002, as the date to hear oral argument on the appeal (the “Scheduling Order”). See Exhibit “G.”

19. A copy of the Scheduling Order also provides that “[t]he temporary stay entered by this Court on February 11, 2002, as clarified by the Order of March 19, 2002, will remain in effect until further order of the merits panel.” See Exhibit “G.”

20. Honeywell respectfully submits that the effect of the stay pending appeal is to leave in place the previous transfer orders issued by the Delaware District Court. Because the Remand Order has been stayed, the Delaware District Court’s provisional transfer order is still the operative order, and all claims removed by Honeywell continue to be provisionally transferred automatically to Delaware.

21. Accordingly, pursuant to Judge Weiner’s Order dated April 12, 2002 (the “Abstention/Remand Order”) “all pending motions for abstention and remand are denied without prejudice . . . [t]he cases are administratively dismissed, subject to reinstatement following the determination of the bankruptcy issues by Judge Wolin and any subsequent appeals thereto.” See Exhibit “H.”

22. A copy of this Notice of Removal and related documents have been served by regular mail on counsel of record for all represented parties and upon all unrepresented parties to the action pending in state court.

Respectfully submitted,

By: _____

Peter J. Neeson, Esquire

Stewart R. Singer, Esquire

John C. McMeekin II, Esquire

Attorneys for Defendant

Honeywell International, Inc., f/k/a Allied

Signal as successor in interest to Bendix

Corporation

Dated:

**CERTIFICATION OF STATE COURT
RECORDS, PLEADINGS AND PROCEEDINGS**

I, Peter J. Neeson, Esquire; Stewart R. Singer, Esquire; John C. McMeekin, Esquire; of full age, certify that on this day, we attached to the Notice of Removal as Exhibit "T", a copy of all of the appropriate records, pleadings and proceedings in the State Court as requested by this Court.

Respectfully submitted,

By: _____

Peter J. Neeson, Esquire

Stewart R. Singer, Esquire

John C. McMeekin II, Esquire

Attorneys for Defendant

Honeywell International, Inc., f/k/a Allied
Signal as successor in interest to Bendix
Corporation

Dated:

CERTIFICATION OF SERVICE

I, Peter J. Neeson, Esquire/Stewart R. Singer, Esquire/John C. McMeekin II, Esquire, of full age, hereby certify that on this day, I caused a true and correct copy of Defendant's Notice to Remove Pursuant to 28 U.S.C. 1452 of the United States Code and Rule 9027(a)(3) of the Federal Rules of Bankruptcy Procedure to be served on all counsel listed below as follows.

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